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IN THE COURT OF APPEALS OF INDIANA

JASON BURNAM,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0709-CR-766
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Carol Orbison, Judge
Cause No. 49G22-0701-FB-5262

May 20, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Jason Burnam appeals his seventy-year sentence for four counts of Class B felony aggravated battery.

Issues

Burnam raises two issues on appeal, which we restate as:

I. whether the trial court abused its discretion in sentencing him; and

II. whether his sentence is inappropriate in light of the nature of the offense and his character.

Facts

On January 11, 2007, Burnam went to work at the Crossroads Industrial Services Factory in Indianapolis. His mother dropped him off at approximately 6 a.m. and he went to the employee cafeteria. At 6:30 he stood up on a table and began shooting his co-workers. He struck Jermaine Early in the leg and elbow, Howard Mallory in the leg, and Anita Frazier in the leg. He fired six shots in the cafeteria and reloaded the .38 semiautomatic handgun. Burnam then walked from the cafeteria and through the factory. Cammie Duncan was in the back of the factory and heard the shots. She was on the phone with a 911 operator when Burnam entered her office and shot her in the leg.

When officers arrived they found Burnam standing in the cafeteria. They ordered him to the ground and he complied. When asked about the gun, Burnam told officers it was in his front pocket. Burnam bought the gun, two clips, and a box of ammunition at a pawnshop the week before the incident.

On January 16, 2007, the State charged Burnam with four counts of Class B felony aggravated battery, Class D felony criminal recklessness, and Class A misdemeanor carrying a handgun without a license. Burnam pled guilty to the four counts of Class B felony aggravated battery on July 16, 2007, and the State dismissed the other two charges. The plea agreement provided for a cap of sixty years of executed time, but sentencing was otherwise left to the trial court's discretion. The trial court found Burnam's lack of criminal history, mental illness, acceptance of responsibility, and remorse as mitigating factors. The unprovoked nature of the attacks, the premeditation, and the work environment location were aggravating factors. The trial court sentenced Burnam to seventy years, with ten on home detention and ten suspended to probation. This appeal followed.

Analysis

I. Abuse of Discretion

We engage in a four-step process when evaluating a sentence under the current "advisory" sentencing scheme. See Anglemyer v. State, 868 N.E.2d 482, 491 (Ind. 2007). First, a trial court must issue a sentencing statement that includes "reasonably detailed reasons or circumstances for imposing a particular sentence." Id. Second, the reasons or omission of reasons given for choosing a sentence are reviewable on appeal for an abuse of discretion. Id. Third, the weight given to those reasons, i.e. to particular aggravators or mitigators, is not subject to appellate review. Id. Fourth, the merits of a particular sentence are reviewable on appeal for appropriateness under Indiana Appellate Rule 7(B). Id.

The trial court issued a very detailed sentencing statement and outlined specific reasons for imposing the sentence. It noted as mitigators that Burnam had no prior criminal history, had mild mental retardation, had mental health issues, accepted responsibility, and expressed remorse. As aggravators, the trial court noted that the attacks were premeditated and unprovoked, which it classified as a "terrifying set of circumstances." Tr. p. 87. The trial court indicated that the fact that the crime happened in a work environment was also a significant aggravator. It explained that in our society "we have the right to go to work in the morning and return home in the evening in one piece." Tr. p. 87. The trial court went on to explain that because workers do not choose their co-workers they must come together in a safe environment without having to worry about violence.

After discussing these aggravators and mitigators, the trial court found that the aggravators outweighed the mitigators. It sentenced Burnam to twenty years each on the first three counts of Class B felony aggravated battery, with ten years of the sentence for the last count to be served on community corrections. It sentenced Burnam to ten years on probation for the fourth count.

Burnam contends that the trial court abused its discretion in finding the work environment to be an aggravator. He argues that the location of the crime is not a statutory aggravator and should not have been used. We disagree. "The nature and circumstances of a crime may be considered an aggravating factor." Mitchem v. State, 685 N.E.2d 671, 680 (Ind. 1997); Ind. Code § 35-38-1-7.1(c) (the criteria listed in the sentencing statute do not limit the matters a trial court may consider in determining the

sentence). Though the trial court did not specifically label this aggravator as "nature and circumstances" it is apparent that the location of the crime in defendant's workplace was the particular circumstance that served as an aggravator.

Burnam also contends that the trial court did not afford enough weight to the mitigators. We do not review the weight of the mitigators and aggravators on appeal. Anglemyer, 868 N.E.2d at 491. We conclude that the trial court did not abuse its discretion in sentencing Burnam.

II. Appropriateness

Having concluded the trial court acted within its discretion in sentencing him, we assess whether Burnam's sentence is inappropriate under Indiana Appellate Rule 7(B) in light of his character and the nature of the offense. See Anglemyer, 868 N.E.2d at 491. Although Rule 7(B) does not require us to be "extremely" deferential to a trial court's sentencing decision, we still must give due consideration to that decision. Rutherford v. State, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). We also understand and recognize the unique perspective a trial court brings to its sentencing decisions. Id. "Additionally, a defendant bears the burden of persuading the appellate court that his or her sentence is inappropriate." Id.

Burnam contends the sentence is inappropriate considering his character—namely his mental health, remorsefulness, acceptance of responsibility, and lack of criminal history. We do take Burnam's mental health into account during our assessment of his character. See Marlett v. State, 878 N.E.2d 860, 865 (Ind. Ct. App. 2007) (considering defendant's Asperger's Disorder and low IQ during assessment of defendant's character),

trans. denied. There is a "need for a high level of discernment when assessing a claim that mental illness warrants mitigating weight." Covington v. State, 842 N.E.2d 345, 349 (Ind. 2006). Under the current definitions of mental illness by the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, at least half of Americans will be mentally ill at some point in their lives as explained in a recent study. Id. When weighing a mental health issue, we include the following factors in our consideration: the extent of the inability to control behavior, the overall limit on function, the duration of the illness, and the nexus between the illness and the crime. Id.

Burnam is mildly mentally retarded and has a full scale IQ in the 70 range.[1] One of the psychiatrists who evaluated Burnam also diagnosed a mild depressive disorder and a paranoid personality disorder. The record is unclear as to how, if at all, these conditions affected his ability to control his behavior or limited his functions, but it should be noted that Burnam graduated from high school and held down steady employment. He had been diagnosed as mildly mentally retarded at an early age and attended special education classes. Burnam told the psychiatrists he committed the crimes because he believed the victims were criticizing him and whispering about him, but admitted he never heard them. The record does not explore the link between his illness and the crime, though one of the psychiatrists opined that Burnam's belief that the victims were making fun of him was not due to psychosis, but to his mental retardation.

[1] Apparently attempts were made to conduct a hearing to address Burnam's mental health and competence, but the hearing was not held. Two court-appointed psychiatrists evaluated him. The reports of both psychiatrists are included in the record before this court

Still, both experts opined that Burnam understood the wrongfulness of his conduct and that his actions were against the law. Taken together, we cannot conclude that Burnam's mental health necessarily warrants a reduced sentence.

Burnam accepted responsibility for the crimes by pleading guilty. A guilty plea does not automatically entitle a defendant to a reduced sentence because courts are still entitled to assess its mitigating effects. Payne v. State, 838 N.E.2d 503, 508 (Ind. Ct. App. 2005), trans. denied. Burnam's plea does not merit a reduced sentenced because the State dropped two charges against Burnam and capped the potential executed time to be served in exchange for the plea. See id. at 509. Burnam expressed remorse via a written statement to the judge, which was read aloud by his attorney at sentencing. We also note that although Burnam led a law-abiding life, the premeditation and planning of this crime indicates a considerable character defect.

Even considering his mental illness, acceptance of responsibility, remorse, and lack of criminal history as favorable to his character, we cannot conclude that the nature of the crime merits a reduction to his sentence. Burnam planned an attack on his innocent co-workers. He came to work with a loaded gun and began firing in the employee cafeteria. He then reloaded the gun and tracked down a supervisor in another part of the building. Burnam shot her in the leg while she was calling for help. Keeping workplaces safe and free of violence or the fear of violence is an important societal concern. This act of violence terrorized Burnams's co-workers and community. Even though Burnam told authorities he did not intend to kill his victims, the fact is that he repeatedly fired a handgun at multiple innocent people.

The positive elements of Burnam's character are not enough to counterbalance the egregious nature of this crime. Burnam faced four counts of Class B felony aggravated battery, which has a potential maximum sentence of eighty years and an advisory sentence of forty years. See I.C. § 35-50-2-5. Our supreme court clearly has instructed that we may review not only the length of a defendant's sentence for appropriateness, but also placement or how that sentence is to be served. See Hole v. State, 851 N.E.2d 302, 304 n.4 (Ind. 2006). Burnam's actual sentence is seventy years, but fifty of those are to be served in the Department of Correction. Given the violent nature of Burnam's workplace crime, we conclude that his sentence is appropriate.

Conclusion

The trial court did not abuse its discretion in sentencing Burnam. His sentence is appropriate in light his character and the nature of the offense. We affirm.

Affirmed.

CRONE, J., and BRADFORD, J., concur.